

The Honorable Judge Robert Lasnik

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

JAMES MCDONALD,

Plaintiff,

V.

ONEWEST BANK, FSB, NORTHWEST
TRUSTEE SERVICES, INC., MORTGAGE
ELECTRONIC REGISTRATION SYSTEMS,
INC., INDYMAC BANK FSB, DOES 1-50,

Defendants.

No. C10-1952 RSL

**DEFENDANT ONEWEST BANK,
FSB'S RESPONSE TO
PLAINTIFF'S FIRST SET OF
INTERROGATORIES AND
REQUESTS FOR PRODUCTION**

COMES NOW, Defendant OneWest Bank, FSB (“OneWest”) and responds to Plaintiff James McDonald’s First Set of Interrogatories and Requests for Production as follows:

I. PRELIMINARY STATEMENT

These responses are made solely for the purpose of this action. Each response and each document produced is subject to all appropriate objections (including, but not limited to, objections concerning competency, relevancy, materiality, propriety and admissibility) which would require the exclusion of any statement contained herein or in any of the documents produced, if any such document or documents were sought to be introduced into evidence in Court. All such objections and grounds are reserved and may be interposed at the time of trial.

Defendant has not completed its investigation of facts, witnesses, or documents related to this action; has not completed its analysis of available data; has not yet completed its discovery in this action; and has not completed preparation for trial. Thus, although a good faith effort has

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PRODUCTION

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1 been made to supply pertinent information when it has been requested, it is not possible in many
 2 instances for unqualified responses to be made. Further, the responses are necessarily made
 3 without prejudice to Defendant's right to produce any subsequently discovered facts, witnesses,
 4 or documents, as well as any new theories or contentions that Defendant may adopt. These
 5 responses are given without prejudice to Defendant's right to provide facts, witnesses or
 6 documents omitted from these responses by oversight, inadvertent or good faith error or mistake.
 7 Defendant has furnished information that is presently available, which may include hearsay and
 8 other forms of evidence that are neither reliable nor admissible.

9 II. GENERAL OBJECTIONS

10 Each of the general objections stated below are continuing objections which Defendant
 11 will incorporate into specific responses as appropriate:

12 A. Not Reasonably Calculated Objection:

13 Many of the requests, in whole or in part, seek information or documents that are
 14 neither relevant to the subject matter of the lawsuit nor reasonably calculated to lead
 15 to the discovery of admissible evidence in respect thereto.

16 B. Ambiguity Objection:

17 Many of the specific requests are phrased in language that is so vague, ambiguous,
 18 and uncertain that Defendant is unable to ascertain what information is requested.

19 C. Burden Objection:

20 Many of the specific requests are materially overbroad in whole or in part, or are
 21 burdensome and oppressive on the grounds that they seek information that is equally
 22 accessible to or already within the possession of the plaintiff, or information that is
 23 not relevant to the subject matter of the dispute herein, or, if relevant, so remotely
 24 relevant as to have no practical benefit to the plaintiff, while placing an inordinate
 25 burden and expense on Defendant to respond.

26 D. Duplicative Request Objection:

1 Many of the specific requests are duplicative in that they request information that
 2 is requested by more than one Interrogatory.

3 III. SPECIFIC RESPONSES TO REQUESTS

4 **Interrogatory 1:** Identify the date, value received and to whom Indymac Bank, FSB sold,
 5 transferred, conveyed, granted, or negotiated or otherwise released its interest in Plaintiff's Note
 6 and/or Plaintiff's Deed of Trust.

7 **RESPONSE:** Defendant OneWest objects to Interrogatory No. 1 on the basis that it is
 8 duplicative, is vague and ambiguous, and is not reasonably calculated to lead to the discovery of
 9 admissible evidence. Moreover, fishing expeditions are not a proper basis to conduct discovery.
 10 Fed. R. Civ. Pro. 26(b)(1) (requiring good cause for a court to order discovery of relevant
 11 material); *Collens v. City of New York*, 222 F. R. D. 249, 253 (S.D. N.Y. 2004)(noting that
 12 "[w]hile Rule 26(b)(1) still provides for broad discovery, courts should not grant discovery
 13 requests based on pure speculation that amount to nothing more than a 'fishing expedition' into
 14 the actions or alleged past wrongdoing of a party not related to the alleged claims or defenses.");
 15 *EEOC v. Harvey L. Walner & Associates*, 91 F.3d 963, 971 (7th Cir. 1996) (stating that
 16 discovery is not to be used as a fishing expedition to see what may turn up).

17
 18 **Request to Produce 1:** Provide any documents, screenshots, communication or other
 19 information that supports your answer to Interrogatory #1.

20 **RESPONSE:** Defendant OneWest objects to RFP No. 1 on the basis that it is vague and
 21 ambiguous and is not reasonably calculated to lead to the discovery of admissible evidence.
 22 Moreover, fishing expeditions are not a proper basis to conduct discovery. Fed. R. Civ. Pro.
 23 26(b)(1) (requiring good cause for a court to order discovery of relevant material); *Collens v.*
 24 *City of New York*, 222 F. R. D. 249, 253 (S.D. N.Y. 2004)(noting that "[w]hile Rule 26(b)(1) still
 25 provides for broad discovery, courts should not grant discovery requests based on pure
 26 speculation that amount to nothing more than a 'fishing expedition' into the actions or alleged

1 past wrongdoing of a party not related to the alleged claims or defenses."); *EEOC v. Harvey L.*
 2 *Walner & Associates*, 91 F.3d 963, 971 (7th Cir. 1996) (stating that discovery is not to be used as
 3 a fishing expedition to see what may turn up).

4

5 **Interrogatory 2:** Describe the contract referred to on Form 1034A provided to Plaintiff in the
 6 Response to the First Request to Produce that is referred to as Freddie Mac Contract
 7 0702156058.

8 **RESPONSE:** Defendant OneWest objects to Interrogatory No. 2 on the basis that it is vague and
 9 ambiguous and is not reasonably calculated to lead to the discovery of admissible evidence.
 10 Moreover, fishing expeditions are not a proper basis to conduct discovery. Fed. R. Civ. Pro.
 11 26(b)(1) (requiring good cause for a court to order discovery of relevant material); *Collens v.*
 12 *City of New York*, 222 F. R. D. 249, 253 (S.D. N.Y. 2004)(noting that “[w]hile Rule 26(b)(1) still
 13 provides for broad discovery, courts should not grant discovery requests based on pure
 14 speculation that amount to nothing more than a ‘fishing expedition’ into the actions or alleged
 15 past wrongdoing of a party not related to the alleged claims or defenses.”); *EEOC v. Harvey L.*
 16 *Walner & Associates*, 91 F.3d 963, 971 (7th Cir. 1996) (stating that discovery is not to be used as
 17 a fishing expedition to see what may turn up).

18

19 **Request to Produce 2:** Provide a copy of the contract and any supporting documents,
 20 screenshots, communication or other information relating to Freddie Mac Contract 0702156058.

21 **RESPONSE:** Defendant OneWest objects to RFP No. 2 on the basis that it is vague and
 22 ambiguous and is not reasonably calculated to lead to the discovery of admissible evidence.
 23 Moreover, fishing expeditions are not a proper basis to conduct discovery. Fed. R. Civ. Pro.
 24 26(b)(1) (requiring good cause for a court to order discovery of relevant material); *Collens v.*
 25 *City of New York*, 222 F. R. D. 249, 253 (S.D. N.Y. 2004)(noting that “[w]hile Rule 26(b)(1) still
 26 provides for broad discovery, courts should not grant discovery requests based on pure

speculation that amount to nothing more than a ‘fishing expedition’ into the actions or alleged past wrongdoing of a party not related to the alleged claims or defenses.”); *EEOC v. Harvey L. Walner & Associates*, 91 F.3d 963, 971 (7th Cir. 1996) (stating that discovery is not to be used as a fishing expedition to see what may turn up).

Interrogatory 3: Identify what the identification number of IN010C found at the top of Form 1036 provided in Response to the First Request to Produce is and describe any relationship that identification number has to Plaintiff’s Note.

RESPONSE: Defendant OneWest objects to Interrogatory No. 3 on the basis that it is vague and ambiguous and on the basis that it is not reasonably calculated to lead to the discovery of admissible evidence. Moreover, fishing expeditions are not a proper basis to conduct discovery. Fed. R. Civ. Pro. 26(b)(1) (requiring good cause for a court to order discovery of relevant material); *Collens v. City of New York*, 222 F. R. D. 249, 253 (S.D. N.Y. 2004)(noting that “[w]hile Rule 26(b)(1) still provides for broad discovery, courts should not grant discovery requests based on pure speculation that amount to nothing more than a ‘fishing expedition’ into the actions or alleged past wrongdoing of a party not related to the alleged claims or defenses.”); *EEOC v. Harvey L. Walner & Associates*, 91 F.3d 963, 971 (7th Cir. 1996) (stating that discovery is not to be used as a fishing expedition to see what may turn up). Without waiving the foregoing objections, Defendant OneWest has no knowledge of identification number of IN010C found at the top of Form 1036.

Request to Produce 3: Provide any and all documentation relating to the answer given in Interrogatory #3.

RESPONSE: Defendant OneWest objects to RFP No. 3 on the basis that it is vague and ambiguous, and on the basis that it is not reasonably calculated to lead to the discovery of admissible evidence. Moreover, fishing expeditions are not a proper basis to conduct discovery.

1 Fed. R. Civ. Pro. 26(b)(1) (requiring good cause for a court to order discovery of relevant
2 material); *Collens v. City of New York*, 222 F. R. D. 249, 253 (S.D. N.Y. 2004)(noting that
3 “[w]hile Rule 26(b)(1) still provides for broad discovery, courts should not grant discovery
4 requests based on pure speculation that amount to nothing more than a ‘fishing expedition’ into
5 the actions or alleged past wrongdoing of a party not related to the alleged claims or defenses.”);
6 *EEOC v. Harvey L. Walner & Associates*, 91 F.3d 963, 971 (7th Cir. 1996) (stating that
7 discovery is not to be used as a fishing expedition to see what may turn up).

8

9 **Interrogatory 4:** Did the FDIC, as Receiver for Indymac Bank, FSB, repudiate the subject Loan
10 or Note?

11 **RESPONSE:** Defendant OneWest objects to Interrogatory No. 4 on the basis that it is not
12 reasonably calculated to lead to the discovery of admissible evidence. Without waiving any of
13 the foregoing objections, no.

14

15 **Request to Produce 3:** Provide any and all documentation relating to the answer given in
16 Interrogatory #4.

17 **RESPONSE:** Defendant OneWest objects to Interrogatory No. 4 on the basis that it is not
18 reasonably calculated to lead to the discovery of admissible evidence. Without waiving any of
19 the foregoing objections, OneWest is not aware of any documentation satisfying the foregoing
20 request. Without waiving any of the foregoing objections, OneWest provides that it has no
21 knowledge of any documentation that satisfies the foregoing request.

22

23 **Interrogatory 5:** Describe any and all communication between Defendant OneWest Bank and
24 the FDIC in relation to the subject Note, Loan, litigation or any other topic relating to the
25 Plaintiff or the Plaintiff's property in this litigation.

1 **RESPONSE:** Defendant OneWest objects to Interrogatory No. 5 on the basis that it is overbroad
 2 and unduly burdensome, and it is not reasonably calculated to lead to the discovery of admissible
 3 evidence. Without waiving any of the foregoing objections, after diligent search and
 4 investigation, OneWest is unaware of any communication between OneWest and the FDIC as
 5 described in Interrogatory No. 5. Moreover, fishing expeditions are not a proper basis to conduct
 6 discovery. Fed. R. Civ. Pro. 26(b)(1) (requiring good cause for a court to order discovery of
 7 relevant material); *Collens v. City of New York*, 222 F. R. D. 249, 253 (S.D. N.Y. 2004)(noting
 8 that “[w]hile Rule 26(b)(1) still provides for broad discovery, courts should not grant discovery
 9 requests based on pure speculation that amount to nothing more than a ‘fishing expedition’ into
 10 the actions or alleged past wrongdoing of a party not related to the alleged claims or defenses.”);
 11 *EEOC v. Harvey L. Walner & Associates*, 91 F.3d 963, 971 (7th Cir. 1996) (stating that
 12 discovery is not to be used as a fishing expedition to see what may turn up). Without waiving
 13 any of the foregoing objections, Defendant OneWest has no knowledge of any communication
 14 responsive to the foregoing request.

15
 16 **Interrogatory 6:** Identify the independent field inspector, person or entity OneWest Bank sends
 17 or causes to be sent to Plaintiff's real property on a monthly basis.

18 **RESPONSE:** Defendant OneWest objects to Interrogatory No. 6 on the basis that it is not
 19 reasonably calculated to lead to the discovery of admissible evidence. Moreover, fishing
 20 expeditions are not a proper basis to conduct discovery. Fed. R. Civ. Pro. 26(b)(1) (requiring
 21 good cause for a court to order discovery of relevant material); *Collens v. City of New York*, 222
 22 F. R. D. 249, 253 (S.D. N.Y. 2004)(noting that “[w]hile Rule 26(b)(1) still provides for broad
 23 discovery, courts should not grant discovery requests based on pure speculation that amount to
 24 nothing more than a ‘fishing expedition’ into the actions or alleged past wrongdoing of a party
 25 not related to the alleged claims or defenses.”); *EEOC v. Harvey L. Walner & Associates*, 91
 26

1 F.3d 963, 971 (7th Cir. 1996) (stating that discovery is not to be used as a fishing expedition to
 2 see what may turn up).

3

4 **Request to Produce 7:** Provide screenshots of any and all records from Indymac Bank, FSB,
 5 Indymac MBS, Indymac Mortgage Services and OneWest Bank, FSB in relation to Plaintiff's
 6 Note, Loan or Deed of Trust from the inception of the loan through the present.

7 **RESPONSE:**

8 Defendant OneWest objects to Interrogatory No. 5 on the basis that it is overbroad and unduly
 9 burdensome, vague and ambiguous, and it is not reasonably calculated to lead to the discovery of
 10 admissible evidence. Moreover, fishing expeditions are not a proper basis to conduct discovery.
 11 Fed. R. Civ. Pro. 26(b)(1) (requiring good cause for a court to order discovery of relevant
 12 material); *Collens v. City of New York*, 222 F. R. D. 249, 253 (S.D. N.Y. 2004)(noting that
 13 “[w]hile Rule 26(b)(1) still provides for broad discovery, courts should not grant discovery
 14 requests based on pure speculation that amount to nothing more than a ‘fishing expedition’ into
 15 the actions or alleged past wrongdoing of a party not related to the alleged claims or defenses.”);
 16 *EEOC v. Harvey L. Walner & Associates*, 91 F.3d 963, 971 (7th Cir. 1996) (stating that
 17 discovery is not to be used as a fishing expedition to see what may turn up).

ATTORNEY CERTIFICATION

The undersigned, as attorney for Defendant OneWest, certifies to the best of her knowledge, information and belief, formed after a reasonable inquiry that the responses and objections are: (1) consistent with the Civil Rules and warranted by existing law or a good faith argument for the extension, modification or reversal of existing law; (2) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and (3) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy and the importance of the issues at stake in the litigation.

DATED this _____ day of August, 2012.

ROUTH CRABTREE OLSEN, P.S.

Heidi E. Buck, WSBA No. 41769
Of Attorneys for Defendants OneWest
Bank, Mortgage Electronic Registration
Systems, Inc., and Northwest Trustee
Services, Inc.

PARTY CERTIFICATION

The undersigned, under penalty of perjury of the laws of the State of Washington
declares that I am an employee of Defendant, that I have read the foregoing Requests, and swear
that the Responses are true and complete to the best of my knowledge and belief.

DATED this 2ND day of August, 2012.

ONEWEST BANK, FSB

By: Charles Boyle
Vice President, OWB

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